



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

PEMBROKE EDUCATION ASSOCIATION/NEA-	:	
NEW HAMPSHIRE	:	
	:	
Complainant	:	
	:	CASE NO. T-0330:4
v.	:	
	:	DECISION NO. 90-130
PEMBROKE SCHOOL BOARD	:	
	:	
Respondent	:	

APPEARANCES

Representing Pembroke Education Association/NEA-NH:

Wally B. Cumings, UniServ Director

Representing Pembroke School Board:

Robert Leslie, Esq., Counsel

Also appearing:

Paul DeMinico, Superintendent
 Thomas Haley, Assistant Superintendent
 Clinton Hanson, P.S.B.
 June Cote, P.S.B.
 Maureen McGarrigle, P.E.A.
 Margaret Poznaski, P.E.A.
 Roger Miknaitis, P.E.A.
 J. Bates, P.E.A.

BACKGROUND

On October 2, 1990, the Pembroke Education Association/NEA-NH (Association) filed improper practice charges against the Pembroke School Board (Board) alleging violation of 273-A:5, I (a), (e) and (g) by refusing to submit to the legislative body at the September 15, 1990 District meeting the cost items negotiated and agreed to by the parties and did support cost items substantially less than those agreed to in negotiations. The specifics of the charge are summarized as follows:

1. The parties had been in negotiations for an agreement to become effective July 1, 1990 and had reached agreement on salary increases and other cost items totaling (\$436,725) for a one year agreement but did not reach agreement on other economic and language issues.

2. The issues other than salary items were submitted to a factfinder who issued his report on May 6, 1990. The parties agreed to submit the salary items and the factfinder's report to the special School District meeting on September 15, 1990. This separation of the issues to be presented to the voters was an attempt to meet the standards required by the Sanborn decision of informing the voters of the specific details of a multi-year contract reached by the parties, the Board supported this procedure.
3. At the September 15th meeting the voters first by voice vote accepted the factfinder's recommendations then rejected it by a division vote, subsequent to the vote the issues were discussed at length on the floor of the meeting, to which one voter objected.
4. The Board misrepresented the meanings of the factfinder's recommendations on the issue of just cause and the voters rejected the factfinder's report. A motion from the floor by a voter moved to substitute the Budget Committees' recommendations which was an appropriation of (\$134,904) instead of (\$436,725) supported by the Board (originally). The School Board then supported the Budget Committees' recommendation stating, "they could face a suit by the N.H. Department of Revenue Administration."

The relief requested:

1. Vacate the special school district meeting of September 15, 1990 and to direct the School Board to seek the necessary approval from the Superior Court for another special meeting.
2. Issue a Cease and Desist Order to the Board from setting preconditions on negotiations, such as using the Budget Committees' appropriations as determinative on money issues.
3. Order the Board to bargain in good faith.

Counsel for the Board, Robert Leslie answers the above charges as follows; (a) the alleged agreement referred to above was a tentative and not a final agreement and the money agreement was only tentative; (b) that the actions of the meeting by the voters was valid and a well recognized parliamentary devise of dividing a warrant article for presentation; (c) generally other facts of the charge are undisputed.

Hearing in this matter was held at the PELRB office in Concord, New Hampshire on November 8, 1990

Exhibits of the district meetings and warrant articles was presented, which is evidence that there were two issues presented to the voters: (1) to see if the District will vote to approve the factfinder's report; (2) a vote separating the salary issues from the rest of the factfinder's report was adopted by the voters.

The complainant offered testimony and exhibits of an analysis of and a transcript of the meeting as recorded by an official Legal Disposition Service; the analysis and the transcript was supplemented by verbal testimony, the Rockingham Superior case dealing with Budget committees' participation in negotiated agreements (Town of Hampton) was discussed at length. The factfinder's

report and recommendations was offered as evidence. The threat of possible court actions with respect to exceeding the Budget Committee recommendations by a voter at the meeting was discussed in detail.

Superintendent of Schools, Paul DeMinico, testified as to the procedures followed subsequent to the salary agreement and his strong recommendation to the Association to "get out the vote" in support of the negotiated agreement at the district meeting.

Witness Clint Hanson, Chief Negotiator for the School Board testified as to his familiarity with the Sanborn case, his support of the salary issues (\$436,725) versus the Budget Committees' recommendation of (\$134,904) and the rejection by the voters of the factfinder's report and his response to questions at the meeting.

Attorney Leslie in closing stated the Board's position that the agreement on money (\$436,725) was only tentative, the School Board rejected the factfinder's report on special items, but it was submitted to voters as required and further that the District meeting belongs to the voters and they took action accordingly.

Mr. Cumings in closing for the Association stated the School Board has misrepresented the factfinder's report specifically with respect to the discipline language, that the voters were misled with respect to money items, in light of the Hampton case and cited the Inter-Lakes case which deals with District meetings as in the case before us.

FINDINGS OF FACT

After considering all testimony, exhibits and written evidence offered at the hearing, PELRB makes the following findings and substitutes them for the requests of the parties:

1. The parties had negotiated to impasse and a factfinder was appointed. The recommendations of the factfinder was approved by the Association but disapproved by the School Board. This report was submitted to the voters in a bifurcated fashion, one covering salaries and one covering all other aspects of the report. The voters on voice vote accepted the factfinder's report but later in the meeting rejected it by a division vote.
2. A tentative agreement had been reached by the parties on salaries and both agreed to submit it to the voters at the special District meeting of September 15, 1990.
3. The September meeting, the voters rejected the salary portion of the agreement and substituted in place of the (\$436,725) requested the sum of (\$134,904) which was the Budget Committees' recommendations which was approved by the voters.
4. The Board after supporting the salary portions of the tentative agreement in the first instance, changed its position and supported the Budget Committees' recommendations as they had been lead to believe that legal action by the N.H. Department of Revenue might occur.

5. Where the Board supported the negotiated tentative agreement, it should have followed through with its support of the negotiated agreement and it failed to do so after agreeing to its support.
6. The Superior Court decision in the Hampton case, at this juncture, serves only as a guide as to the role played by a Budget Committee in negotiated agreements under 273-A and the PELRB will use it only as a guide until such time as the issue is finally resolved judicially or legislatively.
7. The negating authority of the Budget Committee over mutually negotiated agreements by the parties appears to be contrary to the objective of 273-A.
8. PELRB declines the complainants request to vacate the results of the September 15th School meeting, it is considered to be outside of any authority granted to this Board under 273-A.
9. We find the School Board failed its responsibility to support the agreement as negotiated.
10. PELRB declines to act on complainants requests to compel the School Board to seek a special District meeting as it feels this issue can best be resolved by the parties in negotiations.

ORDER

The Pembroke School Board is found to be guilty of an improper practice under 273-A:5 (a) and (h) in failing to follow through on its agreement to support the negotiated agreement.

The parties are hereby ordered to enter into negotiations on all issues involved without preconditions being adopted by either party.

Signed this 17th day of December, 1990.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting.